

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

DARRIAN RACHEL,	:	NO. 1:12-CV-575
	:	
Plaintiff,	:	
	:	
v.	:	<b>OPINION AND ORDER</b>
	:	
UNITED DAIRY FARMERS,	:	
	:	
Defendant.	:	

This matter is before the Court on the Magistrate Judge's Report and Recommendation (doc. 11) and Plaintiff's Objection (doc. 15). For the reasons indicated herein, the Court ADOPTS and AFFIRMS the Magistrate Judge's Report and Recommendation, and DISMISSES this matter with prejudice.

This case involves Plaintiff's allegations that, as a customer of Defendant, he was falsely accused of stealing, which was proven untrue after a police investigation. His pro se Complaint invokes subject matter jurisdiction based on 28 U.S.C. § 1331, that is, "a lawsuit 'arising under the Constitution, laws, or treaties of the United States'" (doc. 3).

The Magistrate Judge initially recommended the Court dismiss Plaintiff's Complaint as frivolous (doc. 4). However the Court, with the benefit of Plaintiff's objection, which the Magistrate Judge did not have before her, found there was "enough before the Court to show that Plaintiff's claims merit investigation and not just dismissal" (doc. 6). The Court stated

that Plaintiff needed to amend his Complaint (Id.). Plaintiff did so (doc. 10), and the Magistrate Judge, after an extensive analysis, again recommended the Court dismiss Plaintiff's Complaint (doc. 11).

The Magistrate Judge noted that Plaintiff fails to state a claim of intentional racial discrimination, as he fails to refer to his race or allege any facts suggesting he was denied services based on his race (doc. 11). The Magistrate Judge further noted that the remaining theories for any relief involve injunctive relief, which is unavailable here where Plaintiff has failed to allege continuous or ongoing discrimination (Id.). Plaintiff indicates in Response that he is willing to take a lie detector test, he invokes his right to equal protection, and he contends it is an injustice for the Court to use other cases in evaluating his own (doc. 15).

Having reviewed this matter, the Court finds the Magistrate Judge's Report and Recommendation thoughtful, well-reasoned, and correct. The Court assures Plaintiff that his truthfulness is not questioned as to the allegation that he was accused of stealing by an employee of Defendant. As such, a lie detector test is not necessary, even if such evidence were considered reliable. The problem with Plaintiff's case is that he fails to allege any connection between the events he experienced and any protected legal status. As such, the Court cannot find

monetary relief in the law that Plaintiff seeks. Plaintiff further must understand that courts constantly compare cases in evaluation of legal claims. Such comparison is at the heart of fair evaluation of claims, so as to arrive at consistency and equal protection under the law. The Court regrets that Plaintiff had a bad experience, being searched by a police officer and accused of stealing. However, the facts alleged in the Amended Complaint fail to state a claim for which relief can be granted.

Accordingly, having reviewed this matter de novo, the Court ADOPTS and AFFIRMS the Magistrate Judge's Report and Recommendation in all respects (doc. 11) and DISMISSES Plaintiff's Amended Complaint with prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B). The Court further CERTIFIES pursuant to 28 U.S.C. § 1915(a)(3) that any appeal of this Order would not be taken in good faith, and therefore the Court DENIES Plaintiff leave to appeal in forma pauperis. McGore v. Wigglesworth, 114 F.3d 601 (6<sup>th</sup> Cir. 1997).

SO ORDERED.

Dated: January 3, 2013

s/S. Arthur Spiegel  
S. Arthur Spiegel  
United States Senior District Judge